

Testimony before Judiciary Committee May 5th, 2010

Thank you Mr. Chairman for asking me to testify on this legislation. I didn't receive the latest version of the bills until late yesterday, and was not involved in any prior discussion of the legislation, so I apologize if my comments are less-than-complete.

First let me say that as the Director of the House Fiscal Agency, I neither support nor oppose these bills because non-partisan staff isn't supposed to do that. Considering what this legislation would do -- the irony of that statement isn't lost on me.

The legislation would appoint me Chairman of an eight member panel consisting of three state government staffers and five members that represent local government -- none of whom are Members of the Legislature.

The legislation would grant this panel the power to unilaterally decide whether the Legislature is in compliance with certain portions of the State Constitution -- a power currently reserved for the Court.

If this panel determined that the Legislature was not in compliance with the Constitution, the panel would have the authority to block implementation of the legislation, and tell the Legislature to: "pay up or shut up".

The Legislature has the authority to overturn Executive Orders and the Governor's line-item vetoes, and if someone tried to reduce or eliminate that power, I can only imagine the outrage that would be expressed on the Floor of the House.

The legislation before you, however, includes no provisions that allow the Legislature to overturn any decision of the Panel. It's my understanding that, under current law, if a local unit thinks legislation violates the Headlee amendment, the matter can be adjudicated. Under this legislation, local governments can determine unilaterally -- since they have a majority of voting members on the panel -- that Headlee is violated and the legislature has no real recourse.

It should also be understood that, if the mandates panel is codified, there are no sunset provisions, and it will be extremely difficult to eliminate. I would expect it to be telling Legislators what to do long after members of this legislature are term-limited out.

It seems to me that it would be an unprecedented and extraordinary transfer of legislative authority to a group of people who are not accountable to the voters or to the voters' elected representatives.

Currently, the Legislature is accountable only to the electorate, and it's the role of the Court to determine whether the Legislature is complying with the Constitution.

The sponsors of the bills seem to have a great deal of confidence in my abilities and the abilities of the budget director and my colleague in the Senate, and while we all strive to

produce the best analyses possible, none of us is qualified to practice law, or render legal opinions about the constitutionality of legislative decisions.

Other issues include who will staff the panel and produce the fiscal notes. As a practical matter, this will probably fall to the fiscal agencies. However, we do not have access to any data base that contains the relevant local fiscal and cost data needed to do the job.

I can distribute a memo about those difficulties.

At the very least, I recommend that the Committee consider other alternatives to address these issues, and deliberate further on this matter. For example, the Committee may want to thoroughly examine the \$2.2 billion of potential violations identified in the Commission report and simply act upon them if you deem them to be valid.

MEMORANDUM

DATE: May 5, 2010
TO: Mitch Bean, HFA Director
FROM: Jim Stansell, HFA Economist
RE: Determining the Fiscal Impact of Legislation that Affects Local Governments

Trying to determine the fiscal impact on local units of government of legislation enacted by the state is typically more difficult than estimating state revenues or costs because there are many instances in which the necessary data or other vital information is simply not available.

In some cases, such as determining the impacts of bills that amend the Revenue Sharing Act, estimating the outcome is usually a reasonably straightforward process. For the most part, there are reliable and readily available sources of information such as population, sales tax revenue, etc. that allow revenue sharing payments to be reasonably estimated because there are no specific assumptions that need to be made and no data constraints.

However, much of the legislation that affects local governments does not lend itself to this type of analysis because there are significant roadblocks that permit an accurate assessment. Often, legislation is permissive in nature in that while it may allow local governments certain powers or authorities (such as issuing bonds or providing abatements against future economic activity), it doesn't mandate specific actions. Because the specific units of government that might undertake these opportunities cannot be identified, determining the impact is usually not possible.

In addition, data limitations can also prevent accurate analysis of bills that impact local governments. For example, the State Tax Commission has a wealth of local property tax data (assessments, taxable values, millage rates, etc) that is available on its web site, but the data are in PDF form and therefore are not convenient to use. The same is true for the L-4023 forms that are submitted annually. These forms contain detailed information on types of property (real and personal, commercial, industrial, residential, etc) such as parcel counts, assessed value, and true cash value, but again, because they are separate from the millage rate data, it is difficult to use them effectively. In other words, there is a lot of data available, but it's not in a cohesive, functional database that would allow its effective use.

Local governments are required to submit LF-65 forms within six months after the close of their fiscal years. These forms provide a detailed picture of the government's revenues and expenditures by source, and could be a valuable source local government data. However, the forms are sometimes not submitted in a timely fashion, the Department of Treasury lacks the resources to audit the forms for accuracy, and although the forms are often sent to the department electronically, they are not in a format that facilitates combining them into a single, useable database.

School districts also provide a significant amount of data to the State. Much of the data is collected by the State in order to determine both School aid payments and federal grant distributions. This includes things like pupil counts, taxable values, local millages levied, number of instructional hours, the number of students who meet federal poverty guidelines,

special education costs and types of disabilities. In addition districts must report detailed revenue and expenditure data as well as individual student level achievement data in order to fulfill federal guidelines.

This level of data allows trend analysis and impacts of various proposals to be estimates. For example, data collected allows analyses ranging from tracking graduation and dropout rates by district over time to providing cost estimates of future per pupil increases or changes in the current funding formula to determining the impact of declining property values on intermediate school district millage revenue.

While districts do provide a great deal of information, there are times when the data available does not allow for accurate analysis. This is often a case of the data collected being housed in database platforms that are not connected or because the information is not directly comparable. For example, school district expenditure data in the Financial Information Database provides detail on how much each district spends on employee insurance, but there's no way to determine how much each district spends on insurance per covered employee. This is because, while there is employee data in both the Registry of Education Personnel as well as in the Office of Retirement Services database of active MPSERS employees, neither of these data sets tells how many employees receive insurance benefits or how many employees are covered as an individual or with a spouse or family.

These are just some of the areas where data limitations prevent analyses of various proposals. Finally, there is a provision that already charges the Department of Treasury with estimating the fiscal impact of any legislation that would affect local revenues. MCL 4.171 states:

"Any bill introduced in the house of representatives or in the state senate which increases or decreases local property taxes or revenues shall have incorporated by the treasury department as a note to the bill a reliable estimate of the amount therein involved."

I hope this information is helpful. Please let me know if you have any questions.